

**Ngu Toh Tung & Ors v
Superintendent of Land and Surveys & Anor**

HIGH COURT (KUCHING) — ORIGINATING MOTION NO 25-10 OF
2000-I

IAN CHIN J

30 SEPTEMBER 2000

Land Law — Acquisition of land — Delay in making award — Whether delay of 23 years between time of s 47 notice and s 48 declaration renders award null and void — Connection between s 47 and s 48 (Sarawak Land Code) — Relevant date for purpose of valuation — Sarawak Land Code ss 47 & 48

The first respondent had in 1973 issued a s 47 (of the Sarawak Land Code (Cap 81)) notice against the applicants' land situated at Sungai Guda, Kuching. The s 48 declaration was made on 14 November 1996 and at an enquiry, it was decided that a sum of RM829,000 was to be paid as compensation. The award was subsequently made on 25 March 2000. The applicant argued that there has been a delay of 23½ years (from 1973 to 1996) between the time of the s 47 notice and the s 48 declaration which rendered the award grossly unfair, null, void and illegal. Counsel for the respondents contended that the s 47 notice was not part and parcel of the s 48 declaration, that they were not intimately connected nor form one integral part.

Held, dismissing the application:

The court is bound to follow the decision of *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58. The Federal Court had held that the two sections are not 'intimately connected' and the relevant date for valuation should be the date of the s 47 notice publication. There can be no question of delay, injustice, gross unfairness or abuse of power when what the respondents had done was entirely within the ambit of the Sarawak Land Code (see pp 555D-E, 556G).

[Bahasa Malaysia summary]

Responden pertama telah, pada 1973, mengemukakan satu notis s 47 (Kanun Tanah Sarawak (Cap 81)) ke atas tanah pemohon yang terletak di Sungai Guda, Kuching. Akuan s 48 telah dibuat pada 14 November 1996, dan dalam suatu penyiasatan ia telah diputuskan bahawa wang berjumlah RM829,000 dikehendaki dibayar sebagai pampasan. Award tersebut telah dikurniakan pada 25 Mac 2000. Pihak pemohon telah menyatakan bahawa terdapat kelewatan selama 23½ tahun (dari 1973 sehingga 1996) di antara masa notis s 47 dan akuan s 48 yang menjadikan award tersebut terlampau tidak adil, batal dan tak sah dan menyalahi undang-undang. Peguam responden menegaskan bahawa notis s 47 tersebut bukan merupakan sebahagian

- A daripada akuan s 48, tidak berkait rapat ataupun merupakan sebahagian yang penting.

Diputuskan, menolak permohonan tersebut:

- B Mahkamah dikehendaki mengikut keputusan *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58. Mahkamah Persekutuan telah memutuskan bahawa kedua-dua seksyen tersebut tidak berkait rapat dan tarikh penilaian yang relevan sepatutnya pada tarikh pengumuman s 47. Tiada persoalan kelewatan, ketidakadilan, terlampau tidak adil ataupun penyalahgunaan kuasa memandangkan apa yang dibuat oleh pihak responden adalah sepenuhnya di dalam bidang Kanun Tanah Sarawak (lihat ms 555D–E, 556G).]
- C

Notes

- D For cases on delay in making award, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1381–1384.

Cases referred to

- Lau Kieng Kong & Ors v Minister for Resource Planning & Anor* [1994] 3 MLJ 443 (refd)
- E *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 (refd)
- Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58 (folld)

Legislation referred to

- F Federal Constitution art 13
Land Acquisition Act 1960
Land Acquisition Act [India]
Sarawak Land Code (Cap 81) ss 47, 48, 51
- G *Lai Peng Seng (Lai & Co)* for the applicants.
Susan Gau (State Attorney General's Chambers Sarawak) for the respondents.

Ian Chin J:

H Introduction

This is an application by the landowners Ngu Toh Tung, Ting Chek Meng @ Ting Chei Men, Ling Tung Won, Su Mee Ging, Ting Sing Ing, Ting Chek Thai, Ting Mui Ing and Wong Hai Siang to quash:

- I (1) An award No 129/2000 of the Superintendent of Lands and Surveys Department, Kuching Division, Sarawak dated 25 March 2000 made under s 51 of the Sarawak Land Code (Cap 81) and concerning the compulsory resumption of 8.2900 hectares of land situated at Sungai

Guda, Kuching and described as Lot 190 Block 5 Muara Tebas Land District; and A

(2) The entire compulsory resumption related proceedings.

The said land was formerly part of Kuching Occupation Ticket No 4649 ('KOT 4649') of which the applicants became co-proprietors on 10 April 1980 and they were aware of a s 47 Sarawak Land Code notification being imposed on KOT 4649 some seven years ago. B

In 1985, some 6,430 sq metres of this land was acquired by the government for the purpose of the construction of a road and the applicants voluntarily surrendered the land to the government at the price of RM5,000 per hectare. The road that was eventually constructed resulted in the said land being situated next to it and enjoying a wider road frontage. C

The s 48 declaration was made on 14 November 1996 and at the enquiry held on 13 March 2000 which the applicants attended, it was decided that a sum of RM829,000 was to be paid as compensation and the award was subsequently made on 25 March 2000. D

Grounds for quashing

The contention is that there has been a delay of $23\frac{1}{2}$ years between the time of the s 47 notice and the s 48 declaration, of $26\frac{3}{4}$ years between the s 47 notice and the award and of three years between the s 48 notice and the award which renders the award grossly unfair, null and void and illegal and had resulted in the acquisition process being conducted unfairly to the prejudice of the applicants and not in accordance with the Land Code and art 13 of the Federal Constitution. E

Those contentions call for a consideration of what relationship s 47 and s 48 have with each other. Ms Susan Gau, legal officer of the State Attorney General, appearing for the respondents, contended that the s 47 notice is not part and parcel of the s 48 declaration, that they are not intimately connected nor form one integral part. Sections 47 and 48 are reproduced here: F

- 47 (1) Whenever the Minister decides that land in any locality is likely to be needed for any of the purposes specified in s 46, the Superintendent shall cause a public notice of the substance of such decision to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorized by the Minister in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries, and do all other acts necessary to ascertain whether the land is suitable for such purpose. G H
- (2) As soon as conveniently may be after such entry, the Superintendent shall assess the compensation for damage resulting therefrom.
- (3) Such compensation shall not become payable so far as it relates to any land which is resumed under s 48 and, if paid, shall be refunded to the Government on demand by the Superintendent. I
- (4) If there is any dispute as to the amount of any compensation which has become payable, the persons to whom it is payable or the

- A** apportionment of the compensation, such dispute shall, if any person interested so requires, be referred to arbitration in accordance with the provisions of s 212.
- 48 (1) Whenever it appears to the Minister that any particular land is needed for any of the purposes specified in s 46, the Minister shall make a declaration to that effect.
- B** (2) The declaration shall be posted in the office of the Superintendent and of the District Officer and shall state the situation of the land, the particular purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land, if any has been made, may be inspected. Such declaration shall be conclusive evidence that the land is needed for the purpose specified therein.
- C** (3) Upon the posting of such declaration an entry thereof shall be made in the Register in respect of the land affected.

In support of her contentions, the learned legal officer had referred to the case of *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58 where the issue was the date for the valuation, that is, whether the date of the s 47 publication or the date of the s 48 declaration. The Federal Court there held that the date should be the date of the s 47 declaration since both s 47 and s 48 had been employed for the purpose of the acquisition. The court there also was of the view that:

- D**
- E** (1) it is perfectly lawful for the government to use a s 48 declaration without first publishing a s 47 notice; and
(2) the two sections are not 'intimately connected'.

Lee Hun Hoe CJ at p 61 also said this:

- F** The interpretation which commended itself to me differs, with respect, from that of the learned judge. I take the view that under the Sarawak legislation it is possible for more declarations than one under s 48 to be made in respect of land comprised in a notification under s 47. I am aware where compensation has to be determined with reference to the material date under s 47 any delay in making a declaration under s 48 is bound to cause the person whose land is to be acquired to suffer pecuniary loss if land prices have arisen between the period of notification under s 47 and declaration under s 48. The delay would be longer if successive declarations under s 48 could be made in respect of land comprised in the notification under s 47. It could also work in the reverse if the land prices tumble down. I hope the government would try to minimise the delay in making the declaration or declarations. One way of preventing long delay would be to fix a time whereby notifications under s 47 would automatically lapse. Another way is to withdraw resumption under s 79 as soon as the land is no more required for public purpose. In my view as long as the publication of the notifications under s 47 exists there is nothing to prevent the making of more declarations than one under s 48 involving the acquisition of a large area as in this case.
- G**
- H**

- I** Pausing here, I would remark that the likelihood of a property market continuing to fall over decades is too remote and therefore such delay would operate more to the injustice of the landowners than to their benefit. However, that passage does recognize the injustice that may work against

the landowners and made several suggestions to avoid it, but that had apparently fallen on deaf ears. To the credit of the government, they also recognize the injustice by not holding strictly to the value at the s 47 notice date and instead to a much later date so as to provide a much higher value. Another point to note is that the case did not expressly decide that the s 48 declaration can be made two decades after the s 47 notice so as to bring into play the s 47 value date. But it is implicit in the passage I have quoted that there can be delay in the making of the s 48 declaration.

Another member of the court, Salleh Abbas FJ, at p 65, was of the view that the two sections do not form an integral part. All the judges of that court distinguished the relevant provisions of the Sarawak Land Code from those of the Indian Land Acquisition Act.

It is unfortunate that despite recognizing the prejudice which actually is an injustice, the court did not rule that a delay which works prejudice or injustice would render the acquisition void. This produces the result, as happens to this case, that the government can insist on paying in 1996 or later the very low 1973 market value of land by the issuance of a s 48 declaration in 1996. I am of the view that no court should allow such an interpretation when it produces such a result.

This case was relied on by *Lau Kieng Kong & Ors v Minister for Resource Planning & Anor* [1994] 3 MLJ 443 for concluding that there is no question of delay between the dates of the notice and declaration since the s 48 declaration is not required to be made after the s 47 notice.

Mr Lai Peng Seng, learned counsel for the applicants, had relied on the case of *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 and other cases which concerns the provisions of the Land Acquisition Act. The court there held that proceedings under that Act 'are meant to be in a continuous motion so that no such interruption or such undue delay or stoppage as to amount to an abandonment of the acquisition could be regarded as within this motion'. They cannot be of assistance in construing the provisions of the Sarawak Land Code. In any event, as mentioned earlier, it was held that ss 47 and 48 are not integral parts.

Much as I disagree with the result which *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* produces, I am bound to follow it. There can be no question of delay, injustice, gross unfairness or abuse of power when what the respondents had done is entirely within the ambit of the Sarawak Land Code as interpreted by *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor*. It is with great reluctance that I dismiss the application with costs to the respondents. In fairness to the respondents, they have in their wisdom not insisted in the 1985 value of RM5,000 per hectare but had instead made an award based on the value of RM100,000 per hectare. The sooner the law is amended, the better it will be for all.

Application dismissed with costs.

Reported by Benjamin Yong